IN THE HIGH COURT OF JUDICATURE AT BOMBAY

ORDINARY ORIGINAL CIVIL JURISDICTION

NOTICE OF MOTION NO.1612 OF 2004

IN

SUMMARY SUIT NO.471 OF 2002

SICOM Ltd. ... Plaintiffs

v/s

Kamal S. Ruia ... Defendant

Mr K.P. Jain with Mr D.R. Mehta for Plaintiffs.

Mr V.L. Desai for Defendant.

CORAM : D.K.DESHMUKH J.

DATE : 7TH APRIL 2005

P.C.: -

1. This is a notice of motion taken out by the defendant for setting aside the decree which is passed against him. The decree is passed because according to the plaintiffs, even after due service of writ of summons, the defendant did not appear. The acknowledgment from the Postal Authority which is filed alongwith the affidavit of service shows that the packet was delivered at the address which was mentioned. It is not the case of the defendant that the address mentioned on the acknowledgment and the packet is not correct. Therefore, under the provisions of section 27 of the General Clauses Act, a presumption arises that the packet was delivered at the address. Mere statement made by the defendant that the acknowledgment is not signed by him or any member of his family, in my opinion, will not rebut the presumption. To test the bonafides of the defendant, I put it to the defendant if the defendant is willing to deposit the decretal amount in the Court, he can be given an opportunity to defend the suit on merit. But the defendant is not willing to accept any such term. In my opinion, notice of motion has been taken out by the defendant only to avoid payment and therefore, entertaining such motion will

defeat the ends of justice. Notice of motion is disposed off.

. Parties to act on the copy of this order duly authenticated by the Associate / Personal Secretary as true copy.

. Certified copy expedited.